



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 3, 1998

Mr. Terry Kyle  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
Renaissance Plaza  
70 N.E. Loop 410, Suite 800  
San Antonio, Texas 78216

OR98-2577

Dear Mr. Kyle:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119229.

The Dime Box Independent School District (the "district") received two requests for a certain audit report relating to a district construction project. You seek to withhold the requested information under section 552.103(a) of the Government Code.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

You advise that the requested information "was prepared in anticipation of possible litigation and settlement of the dispute that has arisen with" a construction company on the project. You say "the dispute is currently ongoing and could lead to possible litigation. There is a dispute as to contract terms and the Board has had the audit prepared to bring to light any problems in payments" to the construction company.

Based on your representations, we conclude that the chances of litigation in this matter are currently too speculative. You may not withhold the requested information under section 552.103(a).

You also suggest that because the construction company in question has provided additional information to the auditor, the audit in question "may actually not be complete and may actually be a working draft, which should not be released." We are unsure which exception you are invoking in this claim. The exception in section 552.116 of the Government Code for draft audits and working papers of the state auditor or other state agencies or institutions of higher education does not appear to apply. Neither does that in section 552.125 for information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act. *See* Tex. Rev. Civ. Stat. Ann. Art. 4447cc. We note that section 552.022(1) of the Government Code provides that "completed audits" are public information. Although, you suggest that the audit at issue here "may actually be a working draft," we do not believe you have established an exception to its disclosure. It must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker  
Assistant Attorney General  
Open Records Division

WMW/ch

Ref: ID# 119229

Enclosures: Submitted documents

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